

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREE SPEECH, by its Member
GREG RUGGIERO; STEAL THIS RADIO; :
DJ THOMAS PAINE; DJ CARLOS :
RISING; DJ SHARIN; DJ.E.S.E.; :
FRANK MORALES; and JOAN MUSSEY, :
Plaintiffs, :
- against - : 98 Civ. 2680 (MBM)
:

JANET RENO, as Attorney General :
of the United States; UNITED :
STATES DEPARTMENT OF JUSTICE; :
and the FEDERAL COMMUNICATIONS :
COMMISSION, :
Defendants. :
:

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FEDERAL COMMUNICATIONS :
COMMISSION, :
Counterclaim-Plaintiff, :
- against - :
STEAL THIS RADIO; DJ THOMAS PAINE; :
DJ CARLOS RISING; DJ SHARIN; :
and DJ.E.S.E., :
Counterclaim-Defendants. :
:

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
EX PARTE MOTION FOR LEAVE TO PROCEED UNDER ASSUMED NAMES**

Preliminary Statement

Plaintiffs DJ Thomas Paine, DJ Carlos Rising, DJ Sharin, DJ.E.S.E. respectfully submit this memorandum of law in support of their ex parte motion for leave to proceed under assumed names.

Plaintiffs, each of whom hosts a radio show broadcast over Steal This Radio, the unlicensed microradio station that is also a plaintiff in this action, are identified in the caption and the body of the First Amended Complaint solely under their "air names". They seek to proceed anonymously in this action primarily because disclosure of their true identities to the Government may subject them to civil fines and criminal prosecutions for having been involved in unlicensed broadcast activities, in violation of federal law. 47 U.S.C. 301. See Decl. of Robert T. Perry, dated September 16, 1998, 4; Decl. of DJ Thomas Paine, dated September 16, 1998, 3.

ARGUMENT

Although it is customary that the identities of parties in litigation be publicly disclosed, the courts have made exceptions in appropriate cases, depending upon a number of factors, which include: "(1) whether the plaintiff challenges governmental activity; (2) whether the plaintiff would be required to disclose information of the utmost intimacy; (3) whether the plaintiff would be compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution; (4) whether the plaintiff would risk suffering injury if identified; and (5) whether the party defending against a suit brought under a pseudonym would be prejudiced." Barth v. Kaye 178 F.R.D. 371, 376 (N.D.N.Y. 1998); Doe v. Shakur, 164 F.R.D. 359, 360 (S.D.N.Y. 1996). Other factors that might be persuasive in allowing plaintiff to proceed in pseudonym include the "extent to which the identity of the litigant has been kept confidential" and "whether, because of

the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing litigant's identities." Doe v. Provident Life and Acc. Ins. Co., 176 F.R.D. 464, 467 (E.D. Pa. 1997). Certain factors heavily weigh in favor of allowing plaintiffs to proceed pseudonymously in this case.

Most importantly, plaintiffs face the very real threat of civil fines and criminal prosecution should their true identities and involvement with Steal This Radio become known to the Government. Perry Decl. 4; Paine Decl. 3. Indeed, several members of Steal This Radio have already been warned by FCC field agent Judah Mansbach that they are subject to such penalties for participation in illegal, unlicensed broadcasting activities. Perry Decl. 5.

Plaintiffs have used their air monikers for the duration of their membership in Steal This Radio. They are known in the Lower East Side community by these names, and have maintained their anonymity through the consistent use of them. Perry Decl. 7; Paine Decl. 2. Because plaintiffs have been typically identified by their pseudonyms in the community anyway, the public interest does not hinge on the disclosure of the names given to them at birth. Doe v. Provident Life and Acc. Ins. Co. 176 F.R.D. at 467.

"Party anonymity does not obstruct the public's view of the issues joined or the court's performance in resolving them. The assurance of fairness preserved by public presence at a trial is not lost when one party's cause is pursued under a fictitious name." Doe v. Stegall, 653 F.2d 180 (1981). That observation is particularly apt here, since the names chosen are not simply the generic "John Does" or "Jane Roes", but rather names by which plaintiffs are identified in the community.

CONCLUSION

For the reasons set forth above, plaintiffs' motion to proceed in this action under assumed names should be granted.

Dated:
New York, New York
September 16, 1998

Respectfully submitted,

Robert T. Perry (RPI199)

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